

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA,)
and)
THE MISSISSIPPI COMMISSION ON)
ENVIRONMENTAL QUALITY,)
an agency of the State of Mississippi,))

Plaintiffs,)

v.)

GENESIS ENERGY, INC.,)
GENESIS CRUDE OIL, L.P.,)
and GENESIS PIPELINE USA, L.P.)

Defendants.)
_____)

Civil Action No. _____

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and acting at the request of the United States Environmental Protection Agency ("EPA") and the Department of the Interior ("DOI") (acting by and through the United States Fish and Wildlife Service), and the Mississippi Commission on Environmental Quality ("Commission"), which is an agency of the State of Mississippi ("State") authorized to file suit in the name of the State to enforce both State and federally enforceable environmental protection statutes and regulations, through their undersigned counsel, file this Complaint against Genesis Energy, Inc., Genesis Crude Oil, L.P. and Genesis Pipeline USA, L.P. (hereinafter referred to collectively as "Genesis" or "Defendants"), and allege as follows:

I. NATURE OF THE ACTION

1. This civil action asserts natural resource damage claims under the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.* (“OPA”), and the Mississippi Air and Water Pollution Control Law (“MAWPCL”), Miss. Code Ann. § 49-17-1, *et seq.* (Rev. 2003), and civil penalty claims under Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321, as amended by OPA, P.L. 101-380, and under MAWPCL. This civil action seeks restoration and compensation for injuries and losses to natural resources, and the assessment of penalties in accordance with applicable statutes due to the discharge of approximately 8,000 barrels (336,000 gallons) of crude oil from a ruptured pipeline owned and operated by Genesis and located in Soso, Jones County, Mississippi. The discharge of crude oil from Defendants’ pipeline began on approximately November 26, 1999 and continued for approximately 25 days. From November 26, 1999 through the subsequent 25 days, this oil release posed a substantial threat of discharge, and caused an actual discharge of oil, to the navigable waters of the United States and to the waters of the State.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of the United States’ claims in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and Sections 311(b)(7)(E) and 311(n) of the CWA, 33 U.S.C. §§ 1321(b)(7)(E) and 1321(n); and over the State’s OPA claim pursuant to 28 U.S.C. § 1331 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b); and over the subject matter of the State’s pendent claims under MAWPCL, pursuant to 28 U.S.C. § 1367(a) (supplemental jurisdiction) because these claims are so related to the federal claims that they form part of the same case or

controversy. The Court has personal jurisdiction over the Parties to this Consent Decree.

3. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), because the discharge and/or substantial threat of discharge occurred in this judicial district and because Defendants conduct business in this district.

III. DEFENDANTS

4. Genesis Pipeline USA, L.P. owns and operates a pipeline system between Mississippi and Louisiana consisting of approximately 266 miles of pipeline.

5. Genesis Pipeline USA, L.P. is a wholly-owned subsidiary of Genesis Crude Oil, L.P.

6. At the time of the spill, Genesis Energy, L.L.C., Genesis Crude Oil, L.P. and Genesis Pipeline USA, L.P. owned and operated the pipeline from which the discharge of crude oil into navigable waters occurred.

7. Genesis Energy, Inc., successor to Genesis Energy, L.L.C., is an owner of Genesis Crude Oil, L.P.

8. Genesis Energy, Inc. serves as general partner of Genesis Pipeline USA, L.P. and Genesis Crude Oil, L.P.

9. Genesis Crude Oil, L.P. and Genesis Pipeline USA, L.P. are managed and operated by officers and directors of Genesis Energy, Inc.

10. Defendants Genesis Energy, Inc., Genesis Crude Oil, L.P. and Genesis Pipeline USA, L.P. are all registered with the Mississippi Secretary of State as businesses with a state of origin of Delaware.

11. Genesis' registered agent for service of process is CT Corporation System, 631 Lakeland Drive, Flowood, Mississippi 39208.

IV. FACTUAL BACKGROUND

12. On December 20, 1999, Genesis Crude Oil, L.P. notified the National Response Center in Washington, D.C. of a discharge of crude oil from a ruptured pipeline.

13. Defendants shut down the ruptured pipe on December 20, 1999.

14. The discharge emanated from a pipeline segment known as Genesis Pipeline USA, L.P. No. 2, a pipeline with an 8 inch diameter, and an 0.188 inch wall, running thirty (30) miles between Soso and Gwinville Junction, Mississippi (the "Soso-Gwinville Junction Segment No. 2").

15. The exact source of the discharge was a hole approximately one quarter (0.25) inch in diameter at a low point in the line approximately 5 miles west of the Soso station.

16. The storage capacity of the Soso-Gwinville Junction Segment No. 2 between the nearest high point and the location of the leak was calculated to be 1,751 barrels. The normal throughput of this section of the line is approximately 1,500-1,770 barrels a day.

17. Analysis of the pipeline showed internal corrosion was the likely cause of the spill. Defendants attribute the internal corrosion to chloride, probably assisted by hydrogen sulfide.

18. The discharge occurred from a section of the pipeline located up-gradient of an intermittent unnamed tributary of the Leaf River.

19. The date of the initial discharge is estimated to be November 26, 1999.

20. Approximately 8,000 barrels (336,000 gallons) of crude oil were

discharged from the rupture in the pipeline.

21. At the time of the discharge, the tributary was flowing and thus transported the oil approximately 6 miles to the Leaf River.

22. Most of the approximately 8,000 barrels of crude oil were discharged into waters of the United States and State.

23. Defendants commissioned a Shoreline Clean-up Assessment Team ("Team") to assess the impact of the discharge. According to the Shoreline Oiling Map prepared by the Team dated December 24-26, 1999, of the 36.1 miles of Leaf River shoreline oiled, 5.9 miles were heavily oiled, 18.9 miles were moderately oiled, 8.8 miles were lightly oiled, and 2.5 miles were very lightly oiled.

24. Both the unnamed tributary of the Leaf River and wetlands have been injured as a result of the discharge.

25. There were 9 birds (8 wood ducks), one mammal, and one reptile reported as confirmed dead as a result of the discharge. To account for unrecovered wood ducks, a multiplier of ten was used to estimate that a total of eighty wood ducks died as a result of the spill.

26. Defendants commissioned a Wetlands Data Report to delineate the wetlands that were affected by the discharge. The January 2000 report concluded that the potential wetland area injured comprises 0.59 acres.

27. The area in the vicinity of the spill is potentially habitat to several endangered or threatened species including the Yellow-blotched Map Turtle, the Gopher Tortoise, and the Gulf Sturgeon Fish. The Pearl Darter Fish, which is a candidate for the List of

Endangered and Threatened Wildlife, also potentially has habitat in the area near the spill.

28. As a result of the discharge, restoration will need to be conducted in order to replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost.

V. STATUTORY AND REGULATORY AUTHORITY

A. FEDERAL AUTHORITY

Prohibition of Oil Discharges

29. Section 311 (a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" as including but not limited to, "any spilling, leaking, pumping, pouring, emitting emptying or dumping." Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) defines "oil" as "oil of any kind or in any form."

30. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or environment of the United States.

31. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973), has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or environment of the United States include discharges of oil that, *inter alia*, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

32. Under Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), as amended by the Debt Collection Act of 1996, 40 C.F.R. § 19.4, violations occurring after January 30, 1997 (but before March 16, 2004) are subject to penalties of up to \$27,500 per day of violation or up to \$1,100 per barrel of oil discharged.

Natural Resource Damages

33. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, federal trustees are designated by the President to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States; and state and local trustees shall be designated by the Governor to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the State or a political subdivision.

34. The National Oceanic and Atmospheric Administration has promulgated a Natural Resource Damage Assessment regulation at 15 C.F.R. Part 990, to be used by trustees in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil.

35. Pursuant to Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and the National Contingency Plan, 40 C.F.R. Part 300, Subpart G, DOI and the Mississippi Department of Environmental Quality ("MDEQ") have been designated to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States and the State of Mississippi. Pursuant to 15 C.F.R. Section 990.14(a)(1), MDEQ has been designated to serve as the lead administrative trustee for the purpose of coordinating natural resource damage assessment activities in this case.

36. Pursuant to Section 1006(c) of OPA, 33 U.S.C. § 2706(c), state and federal trustees are authorized to assess natural resource damages and to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

37. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides as follows:

Notwithstanding any other provision or rule of law... each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines... is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

38. Section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2), provides that the damages referred to in Section 1002(a) of OPA include, *inter alia*, "[d]amages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, [or] a State trustee"

39. Pursuant to 15 C.F.R. Section 990.62, the trustees may issue a written demand, inviting a responsible party to implement the Final Restoration Plan, and to advance a specified sum representing trustee assessment costs and all trustee costs associated with implementing the Final Restoration Plan.

B. STATE AUTHORITY

Prohibition of Oil Discharges

40. Pursuant to Miss. Code Ann. § 49-17-29(2)(a) (Rev. 2003), "it is unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state."

41. Pursuant to Miss. Code Ann. § 49-17-43(2) (Rev. 2003), "... the [C]ommission shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 49-17-1 through 49-17-43. . . ." Suit in federal court pursuant to the supplemental jurisdiction of that court also is authorized by the Commission's incidental powers clause, Miss. Code Ann. § 49-17-17(n) (Rev. 2003).

42. Pursuant to Miss. Code Ann. § 49-17-43(1) (Rev. 2003), "[a]ny person found by the [C]ommission violating any of the provisions of Sections 49-17-1 through 49-17-43. . . shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000), for each violation. . . ."

Natural Resource Damages

43. Pursuant to Miss. Code Ann. § 49-17-43(3) (Rev. 2003):

Any person who violates any of the provisions of, or fails to perform any duty imposed by, Sections 49-17-1 through 49-17-43 or any rule or regulation issued hereunder, . . . and causes the death of fish or other wildlife shall be liable, in addition to the penalties provided in subsection (1) and (2) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks

VI. GENERAL ALLEGATIONS

44. Defendants' pipeline located in Soso, Jones County, Mississippi is an "onshore facility" within the meaning of CWA. 33 U.S.C. § 1321(a)(10).

45. Each Defendant is a "person" within the meaning of OPA Section 1001(27), 33 U.S.C. § 2701(27) and CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7), and

MAWPCL.

46. Each Defendant is an "owner" or "operator" of an onshore facility within the meaning of CWA. 33 U.S.C. § 1321(a)(6).

47. Each Defendant is a "responsible party" within the meaning of OPA because each was an owner or operator of a pipeline at all times relevant to this case. 33 U.S.C. § 2701(32)(E).

48. Between approximately November 26, 1999 and December 20, 1999, Defendants' facility discharged and/or substantially threatened to discharge oil into the Leaf River and an unnamed tributary of the Leaf River.

49. The oil released and discharged from Defendants' facility was "oil" within the meaning of CWA and OPA. The discharge of oil caused pollution of the waters of the State within the meaning of Miss. Code Ann. § 49-17-29(2)(a) and § 49-17-5(1)(a) (Rev. 2003).

50. Such discharges were "discharges" within the meaning of CWA and OPA.

51. The Leaf River and the unnamed tributary to the Leaf River are "navigable waters" of the United States within the meaning of CWA and OPA and are "waters of the State" within the meaning of Miss. Code Ann. § 49-17-5(1)(f) (Rev. 2003).

FIRST CLAIM FOR RELIEF: NATURAL RESOURCE DAMAGES

52. Paragraphs 1 through 51 are realleged and incorporated herein by reference.

53. The discharge of oil into navigable waters of the United States, and into waters of the State, from November 26, 1999 to December 20, 1999 renders Defendants liable under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), and under Miss. Code Ann. § 49-17-43

(Rev. 2003) for the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources, their services and for the diminution in value of those natural resources and their services pending restoration, including the cost for assessing the natural resource damages.

SECOND CLAIM FOR RELIEF: CWA PENALTY

54. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

55. Section 311(b)(7) of the Clean Water Act, 33 U.S.C. § 1321(b)(7), authorizes civil penalties up to \$25,000 per day of violation or up to \$1,000 per barrel of oil discharged. Section 311 was amended by P.L. 104-134 to provide for a civil monetary penalty inflation adjustment; as implemented in 40 C.F.R. § 19.4, civil penalties up to \$27,500 per day per violation or up to \$1,100 per barrel are authorized for violations after January 30, 1997 and before March 16, 2004. See 61 Fed. Reg. 69360 (1996). The United States seeks penalties pursuant to these laws and regulations for Defendants' discharge of oil.

THIRD CLAIM FOR RELIEF: MAWPCL PENALTY

56. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. Miss. Code Ann. § 49-17-43(1) (Rev. 2003) authorizes civil penalties up to \$25,000 per day for each violation of Sections 49-17-1 through 49-17-43. The State seeks penalties pursuant to these laws and regulations for Defendants' discharge of oil.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs the United States and the State of Mississippi respectfully request that

this Court:

1. Summon Defendants to appear and answer this Complaint, unless a proposed Consent Decree is lodged with the Court simultaneously with this filing.
2. Enter a judgment against Defendants and in favor of the United States and the State of Mississippi for all of the injury to, destruction of, loss, or loss of use of natural resources and natural resource services resulting from the oil spill, including the costs of restoring, replacing, and/or acquiring the equivalent of the injured resources and the diminution in value of those resources and their services pending restoration or replacement.
3. Order Defendants to pay the costs incurred by the United States and the State of Mississippi in assessing the natural resource damages and preparing a plan for restoration of such damages.
4. Order Defendants to implement, or to pay the costs incurred by the United States and the State of Mississippi in implementing, the Final Restoration Plan developed by the Natural Resource Trustees for restoration of natural resources damaged by the discharge of oil, and any modifications to the Plan.
5. Order Defendants to pay future costs incurred by the United States and the State of Mississippi for monitoring and oversight of the implementation of the Final Restoration Plan, and any modification to the Plan.
6. Assess civil penalties for up to the maximum amounts provided in the applicable statutes.

7. For other such relief as the Court deems just and proper.

Respectfully submitted,

For the United States:

Dated: 6.15, 2004

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

Dated: June 8, 2004

VALERIE K. MANN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

overnight deliveries:
1425 New York Ave. NW, Rm. 13073
Washington, DC 20005

Dunn O. Lampton
United States Attorney

Dated: _____, 2004

COLBY LANE
Assistant United States Attorney
Mississippi Bar No. 99617
U.S. Attorney's Office
Southern District of Mississippi
188 E. Capitol St.
Jackson, MS 39201

For the Mississippi Commission on Environmental
Quality, an agency of the State of Mississippi

Dated: June 16, 2004

KELLY R. RILEY

Senior Attorney

Mississippi Bar No. 99660

Mississippi Department of Environmental Quality

P.O. Box 20305

Jackson, MS 39289-1305